

Va. Administrative Dispute Resolution Council

Minutes

April 29, 2004 Meeting
Richmond, Virginia

Present: Sheryl D. Bailey, Deputy Secretary of Administration; Al Bridger; Raymond E. Davis; Claudia T. Farr; Kathy Fischer; James W. Fisher; John Gazzola; Charles Gray; Gail Jaspen; Larry Jones; John Kirby; Carol Mitchell; Barbara Newlin; William E. Price; Paul Prissel; John Settle; Ernest Spratley

Sheryl Bailey, Deputy Secretary of Administration, called the meeting to order at approximately 10:00 a.m. Council Subcommittees and others gave the following reports:

ADR Update in Procurement & Contracting (Claudia Farr, EDR for Joe Damico, DGS): Since the last Council meeting, DGS staff has met internally to discuss the inclusion of an ADR process for state contracts, consistent with the Virginia Public Procurement Act and in conjunction with the procedures set out in the Agency Procurement and Surplus Property Manual. A working draft for an “Informal Dispute Resolution” process has been developed and there is potential for collaboration with VITA in drafting a general clause for both DGS and VITA contracts. A proposed clause and implementation plan is expected to be presented at the next quarterly VADRA Council meeting.

Resource Inventories Overview (Bill Price, DCR and Larry Jones, VDOT, Data Collection & Analysis Subcommittee Co-Chairs): This subcommittee compiled and analyzed, through a report and Excel spreadsheets, the basic ADR resources information provided by some 70 executive branch agencies. The report concluded that the overall breadth and depth of ADR usage within the responding agencies was currently low (for about 70% of the responding agencies). Pockets of expertise were documented however, and will be used for informational and networking purposes within the state as agencies become more familiar with the benefits of ADR and begin to explore its use.

Pilot Recommendations & Coaching Agreement (Gail Jaspen, DHP and Carol Mitchell, DPOR, Policy & Implementation Subcommittee Co-Chairs): This subcommittee recommended the following agencies for assignment of coaching teams for pilot ADR projects: the Board of Accountancy (Carol Mitchell and Duane Shockley, coaches); the Dept. of Mental Health, Mental Retardation & Substance Abuse Services (John Settle, coach, and second coach to be confirmed); and the Dept. of Forestry (coaches to be confirmed). A fourth pilot for the use of ADR in procurement and contracting is already under development through the Department of General Services and VITA (coaches to be confirmed). A draft coaching agreement was distributed, discussed and approved for use with the pilots. All four pilot recommendations were approved unanimously by the Council members in attendance. It was agreed that basic orientation and general guidance be provided to each of the coaching teams in May, to

ensure the best use of pilot resources. Pilot development is expected to begin no later than June.

“Just in Time” Training Needs (John Settle, SETTLEMENT Assocs., and Barbara Newlin, DMAS, Training Co-Chairs): This subcommittee recommended that (1) basic ADR training be continued on a periodic basis for agency DRCs and related staff; (2) a model training package be developed for agencies to use internally; (3) training be designed where useful and feasible for the various pilot projects; and (4) training be developed for one or more groups of neutrals to form an internal shared pool for state ADR needs.

VADRA Web Site (Paul Prissel, Asst. Secretary of Commerce & Trade, and Steve Marzolf, VITA): Paul Prissel and Steve Marzolf have been developing ideas and content for a VADRA website, including information on VADRA’s mission, meeting announcements and minutes, training resources, links to other state and federal ADR internet resources, reports, neutrals, and state agency pilots. Agency DRCs would also be listed, with contact information comparable to that already found on the state’s employee directory.

The meeting was adjourned at approximately 11:15 a.m.

April 2004 Update: Developing ADR Clause/Procedures for State Procurement & Contracting

ADR procedures are found in contracts “let” by some federal agencies (e.g. Air Force, Department of Transportation). Procedures, in some cases, can be very complex requiring federal agencies to have their own ADR staff to assist federal procurement officers when ADR processes are invoked.

In addition to the federal ADR examples, there are state agencies that have implemented some form of an ADR process:

- DMHMRSAS developed an administrative process that places the dispute in front of a panel of disinterested parties for a decision
- DPS has an appeals board, for goods purchases only, to hear appeals of contract awards
- VITA has developed ADR procedures that have been invoked on at least one occasion
- Department of Taxation

DGS/DPS staff has met internally since the last ADR council meeting to discuss the appropriateness of including an ADR process in state contracts, considering the Virginia Public Procurement Act (VPPA) and the policies and procedures as set forth in the DPS Agency Procurement and Surplus Property Manual (APSPM). In general, the VPPA authorizes public bodies to enter into agreements that include the use of ADR to resolve contractual disputes, §2.2-4366. However, such procedures are nonbinding and subject to §2.2-514, Compromise and Settlement of Disputes.

Therefore, with the authority provided in the VPPA, DGS/DPS staff developed, in draft, an “Informal Dispute Resolution” (IDR) process, a process less complex than the federal models. By developing procedures that are less complex than more formal ADR methods, the proposed process can be implemented by agencies quickly without the need for intense ADR training for purchasing officers, or the need for in-house ADR expertise. The IDR process does not allow for the use of a wide range of ADR processes; however, what it does offer though is an alternative dispute process (similar to ADR negotiation process) that agencies and vendors can invoke, without immediately going to court, that does not exist in our procurement procedures and contract clauses today.

A summary of the process follows:

- 1) vendor to notify agency, in writing, the nature of the dispute and to identify a representative authorized to settle the dispute on its behalf

- 2) the agency shall appoint a senior management representative not directly involved in the procurement to represent the agency
- 3) representatives shall negotiate in an effort to resolve the dispute without the need for legal counsel
- 4) the use of a facilitator to accelerate the resolution process is encouraged
- 5) if dispute is not successfully resolved within a specified time period from the initial request to invoke IDR, the dispute may then be pursued in accordance with the code and APSPM.

DGS staff has met with VITA staff to share thoughts regarding the implementation of the developed “IDR” process in statewide contracts. It was agreed that a single ADR clause should be developed, if possible, for all state contracts.

We are now at a point where additional dialogue between DGS and VITA is necessary to determine if a common clause can be crafted to meet the needs of those procurements VITA has authority over and those where DGS has procurement authority. The plan moving forward will be for DGS and VITA to meet, discuss and draft a common clause for the committee’s review at the next VADRA meeting. Also, for the next meeting, a proposed implementation plan for introducing an ADR clause into state contracts will be presented to the committee.

April 19, 2004

Memorandum:

To: ADR Council Members
From: Data Collection & Analysis Sub-committee
Subject: Agency ADR Survey Responses

Agency ADR Resource Inventories were collected by Claudia Farr's office at the Department of Employee Dispute Resolution. All of the surveys were then forwarded to the Data Collection & Analysis Sub-committee for analyzing the data.

Due to the limited amount of information that was asked on the resource inventory the conclusions that can be drawn are also limited.

Attached is an Excel spreadsheet with numerous tabs displaying the collected information, mostly with graphs. You will be able to get a summary perspective of the data by viewing the graphs.

The tab labeled "Data Source" is the worksheet where all the collected data is compiled. This worksheet is very wide, ranging from Column A to Column AE. If planning to print this tab use 8 ½ x 14 paper in your printer.

The spreadsheet is sorted by the "ADR Usage Score" determined for each agency, starting with 0 to a maximum score of 25; then by agency code within each score range.

Based on the data collected, the following page offers observations from that data.

Suggestions for pilot agencies:

- Look at those agencies that are authorized/required to use ADR by Code or other regulation.
- Use results of solicitation for pilot volunteers sent from VADRA on April 5, 2004.

For questions related to the attached data collection spreadsheet please contact Bill Price at 804-371-7483, or bprice@dcr.state.va.us

Observations from Data Collected
Agency ADR Resource Inventories

1. 70 of 94 (?) agency responses were collected.
Ref: “Data Source” tab on spreadsheet
2. 11 agencies indicated they are authorized to use ADR by Code
Ref: “Code Auth” tab on spreadsheet
3. Overall usage of ADR is low among agencies that responded; based on the ADR Usage Score determined for each agency.
Ref: “Score” tab

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|----------|-------|---------------|
| 49 of 70 | (70%) | Scored LOW |
| 12 of 70 | (17%) | Scored MEDIUM |
| 9 of 70 | (13%) | Scored HIGH |
4. The most frequently used ADR process among agencies...
Ref: “Most Used” tab
 - Policy Dialogue; 51 of 70 agencies (73%) used this process to varying degrees
5. The least frequently used ADR process among agencies...
Ref: “Most Used” tab

Partnering; 21 of 70 agencies (30%) used this process to varying degrees